

AMENDED IN SENATE MAY 25, 2005

AMENDED IN SENATE MAY 10, 2005

AMENDED IN SENATE MAY 2, 2005

SENATE BILL

No. 728

Introduced by Senator Escutia

February 22, 2005

An act to add Section 10177.3 to the Business and Professions Code, and to add Article 8 (commencing with Section 12418) to Chapter 1 of Part 6 of Division 2 of the Insurance Code, relating to title insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 728, as amended, Escutia. Title insurance: title solicitors.

Under existing law, the Insurance Commissioner generally regulates insurance, including title insurance.

This bill would prohibit a person from marketing, offering, soliciting, negotiating, or selling title insurance in this state unless the person holds a valid certificate of registration as a title solicitor issued by the commissioner. It would specify the individuals subject to this prohibition, and would provide that a violation of the prohibition is a misdemeanor. By creating a new crime, the bill would impose a state-mandated local program.

The bill would set forth application requirements and procedures for obtaining and renewing a certificate of registration as a title solicitor, and would impose certain other requirements on persons holding this certificate.

The bill would authorize the commissioner to adopt rules and regulations for administering this program, and would require the

commissioner to adopt regulations regarding certain expenditures made by title solicitors.

Existing law, the Real Estate Law, regulates the licensure of real estate salespersons and brokers and prohibits them from receiving fees, compensation, other consideration for referring customers to any escrow or title company, as specified.

This bill would require all real estate licensees to advise home purchasers, *in writing, at the time a contract is made or at another specified time*, that they are not required to use escrow or title agents recommended by the real estate agent, and are entitled to select escrow or title insurance services that best meet their needs.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 10177.3 is added to the Business and
- 2 Professions Code, to read:
- 3 10177.3. Every real estate licensee representing a home
- 4 purchaser shall inform the purchaser ~~that, in writing, at the time~~
- 5 ~~the contract is made or in conjunction with other statutorily~~
- 6 ~~required written disclosures, of both of the following:~~
- 7 (a) That he or she is not required to use an escrow agent or
- 8 title insurance company recommended by the real estate agent,
- 9 real estate broker, mortgage broker, or lender. ~~Every real estate~~
- 10 ~~licensee shall inform a home purchaser that lender.~~
- 11 (b) That prices and services among escrow and title companies
- 12 vary, and the home purchaser should select an escrow or title
- 13 insurance company that best meets his or her needs.
- 14 SEC. 2. Article 8 (commencing with Section 12418) is added
- 15 to Chapter 1 of Part 6 of Division 2 of the Insurance Code, to
- 16 read:

Article 8. Title Solicitors

12418. (a) A person shall not market, offer, solicit, negotiate, or sell title insurance in this state unless the person holds a valid certificate of registration as a title solicitor issued by the commissioner pursuant to Section 12418.2.

(b) For purposes of this chapter, “title solicitor” means a natural person employed by, or under contract to, a title insurer, underwritten title company, or controlled escrow company transacting title insurance, and includes, but is not limited to, any natural person who markets, offers, solicits, negotiates, or sells title insurance, regardless of whether the person’s job title is marketing representative, sales representative, marketing sales representative, salesperson, title representative, account representative, escrow officer, escrow representative, or any other job title. Title insurers, underwritten title companies, or controlled escrow companies may not compensate an employee or contractor of a real estate broker or agent to perform the duties that would otherwise require a certification as a title solicitor as defined by this section.

(c) If any person markets, offers, solicits, negotiates, sells, or assumes to act in the capacity of a title solicitor without obtaining a certificate of registration pursuant to Section 12418.2, the commissioner may issue a cease and desist order pursuant to Section 12921.8.

(d) Any person who markets, offers, solicits, negotiates, sells, or assumes to act in the capacity of a title solicitor, without a valid certificate of registration issued by the commissioner, is guilty of a misdemeanor.

12418.1. No certificate of registration is required under the provisions of this article for an employee of a title company, underwritten title company, or controlled escrow company whose principal job is to perform any of the following services:

(a) To perform title searches.

(b) To examine or certify titles to real property.

(c) To perform title work that does not include the solicitation, negotiation, or effecting of contracts of title insurance, or the signing of title insurance policies.

(d) To perform administrative or clerical work that does not include the solicitation, negotiation, or effecting of contracts of title insurance, or the signing of title insurance policies.

12418.2. (a) A certificate of registration as a title solicitor shall be applied for and renewed by filing with the commissioner a written application. The application shall be on a form prescribed by the commissioner, and shall prescribe the disclosure of information that will aid the commissioner in determining whether the prerequisites for the certificate have been met. The applicant shall certify that the contents of the application are true and correct.

(b) Each application for a certificate of registration shall contain the following:

(1) The residence address, the principal business address, and the mailing address of the applicant.

(2) A statement, signed by an officer of the business by whom the applicant is or will be employed, certifying that the business has satisfied itself that the named applicant is trustworthy and competent to act as its title solicitor. Prior to signing this statement, the business shall provide training to the applicant regarding the antirebate statutes contained in Article 6 (commencing with Section 12404).

(c) In addition to an application, each applicant for a certificate of registration shall submit authenticated fingerprints to the department, in the manner directed by the department.

(d) Each application to obtain or renew a certificate of registration shall be accompanied by a filing fee in an amount or amounts determined by the department to be sufficient to defray the department's actual cost of processing the application or renewal. An application shall not be deemed filed unless it has been delivered to the Licensing Services Division of the department, accompanied by the proper filing fee.

(e) The commissioner may decline to act on an incomplete or defective application until an amended application that completes the prescribed form has been filed with the department.

12418.3. (a) An applicant or holder of a certificate of registration as a title solicitor is not required to pass a qualifying examination, and is exempt from prelicensing and continuing education requirements, except as specified in this article.

1 (b) Upon the filing of an application for the issuance or
2 renewal of a certificate of registration, the commissioner may
3 conduct an investigation and require the filing of any
4 supplementary documents, affidavits, and statements that may be
5 necessary to obtain information that will assist him or her in
6 determining whether the antirebate training specified in
7 paragraph (2) of subdivision (b) of Section 12418.2 has been
8 provided to the applicant.

9 12418.4. (a) Each certificate of registration issued under this
10 chapter shall be for a two-year period beginning on the date the
11 certificate is issued.

12 (b) Not less than 60 days before a certificate of registration
13 will expire, the commissioner shall mail an application to renew
14 the certificate to the last known address appearing on the
15 registrant's records. It shall be the responsibility of the registrant
16 to renew his or her certificate, whether or not a renewal notice is
17 received.

18 (c) The application for renewal of an expired certificate of
19 registration may be filed after the expiration date and until the
20 same month and day of the next succeeding year. In addition to
21 the fee for a renewal application, a delinquent fee in the amount
22 of fifty dollars (\$50) shall be assessed for each application for
23 renewal filed after the expiration date. Each registrant shall be
24 subject to payment of delinquent fees under this subdivision. The
25 commissioner may waive the delinquent fee, or accept a renewal
26 filed after the date specified in this subdivision, if the registrant's
27 failure to comply is due to clerical error or inadvertence on the
28 part of the department.

29 12418.5. (a) Notwithstanding any other provision of law to
30 the contrary, the provisions set forth in Sections 1668, 1668.1,
31 1668.5, 1669, 1670, 1738, 1738.5, 1743, and in Article 6
32 (commencing with Section 12404), shall apply to all applicants
33 or holders of a certificate of registration issued pursuant to this
34 article.

35 (b) Except as provided in Section 1669, a certificate of
36 registration shall not be denied, restricted, suspended, or revoked
37 without an opportunity for the prospective registrant or registrant
38 to be heard. When a hearing is held, the proceedings shall be
39 conducted in accordance with Chapter 5 (commencing with

1 Section 11500) of Part 1 of Division 3 of Title 2 of the
2 Government Code.

3 (c) Any costs associated with an enforcement action or
4 investigation shall be paid for by the holder of a certificate of
5 registration issued pursuant to this article.

6 (d) In addition to, or in lieu of, any other penalty that may be
7 imposed under this article, the commissioner may bring an action
8 against the business by whom an applicant is employed for any
9 violation of the antirebate statutes contained in Article 6
10 (commencing with Section 12404).

11 12418.6. (a) The commissioner may issue rules and
12 regulations, as necessary, to administer the program established
13 by this article.

14 (b) The commissioner shall adopt regulations to define
15 reasonable expenditures for title solicitors pursuant to
16 subdivision (d) of Section 12404.

17 12418.7. The registration provisions of this article shall not
18 take effect until the regulations adopted pursuant to subdivision
19 (b) of Section 12418.6 have been approved by the Office of
20 Administrative Law.

21 SEC. 3. No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 the only costs that may be incurred by a local agency or school
24 district will be incurred because this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the
26 penalty for a crime or infraction, within the meaning of Section
27 17556 of the Government Code, or changes the definition of a
28 crime within the meaning of Section 6 of Article XIII B of the
29 California Constitution.